

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

TVI. INC.,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 4:06-CV-697 (JCH)
)	
INFOSOFT TECHNOLOGIES, INC.,)	
)	
Defendant.)	

MEMORANDUM AND ORDER

The matter is before the Court on Plaintiff's Motion for Partial Summary Judgment (Doc. No. 85), filed August 31, 2007. Upon consideration, more briefing is needed regarding Defendant's argument against summary judgment on Counts III and V. Specifically, Defendant appears assert the affirmative defense of set-off. See Buchweiser v. Estate of Laberer, 695 S.W.2d 125, 129 (Mo. 1985) (explaining that set-off "is generally founded on a liquidated debt and used to discharge or reduce plaintiff's claim by an opposite claim arising from a transaction extrinsic to the plaintiff's cause of action."). Defendant, however, has not explicitly raised set-off, either as a counterclaim or affirmative defense, in its pleadings. See Sveum v. J. Mess Plumbing, Inc., 965 S.W.2d 924, 927 (Mo. Ct. App. 1998) (holding a party must raise a claim for set-off in its pleadings).

As such, the Court requires additional briefing on two discrete questions: (1) Under Missouri law, must set-off be pled as a counterclaim or may it be pled as an affirmative defense? (2) Does Defendant's Second Amended Answer and Counterclaim (Doc. No. 74) sufficiently assert a set-off counterclaim or affirmative defense?¹

¹The previous round of briefing on this summary judgment motion was almost devoid of citation to legal authority. The Court reminds the parties that they cite relevant legal authority in their

Accordingly,

IT IS HEREBY ORDERED that Defendant shall file a brief no later than **Friday, November 2, 2007** answering these two questions. Plaintiff may file a response no later than **Wednesday, November 7, 2007**. Defendant may file a reply no later than **Tuesday, November 13, 2007**.

Dated this 29th day of October, 2007.

/s/ Jean C. Hamilton

UNITED STATES DISTRICT JUDGE

briefs.